

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 32401 of 2005(G)

IOP.22/2002 of PRINCIPAL SUB COURT,NORTH PARAVUR

PETITIONERS: RESPONDENTS NOS.4 AND 5.

1. C.A.WILSON, AGED 47 YEARS, S/O.ARJUNAN,
CHERUPARAMBIL HOUSE, AYYAMPILLY P.O. KUZHUPPILLY,
ERNAKULAM DISTRICT.
2. KORATH, AGED 59 YEARS, S/O.ITTIRA,
KOCHAKKAN HOUSE, AYYAMPILLY P.O. KUZHUPPILLY,
ERNAKULAM DISTRICT.

BY ADV. SRI.B.ASHOK SHENOY
SRI.ABU MATHEW
SRI.ANIL KURIAN THOMAS
SRI.SOBHAN GEORGE

RESPONDENTS: PETITIONERS&RESPONDENTS NOS.1TO 3 AND 6:

1. AYYAMPILLY KIZHAKKEPPADAM KARSHAKA
SAMAJAM, AYYAMPILLY P.O. KUZHUPPILLY, ERNAKULAM
DIST. REP. BY ITS PRESIDENT, JAMES, S/O.THARIATH,
AYYAMPILLY P.O. KUZHUPPILLY, ERNAKULAM DISTRICT.
2. M.M.POULOSE, S/O.MATHEW, SECRETARY,
AYYAMPILLY KIZHAKKEPPADAM KARSHAKA SAMAJAM,
AYYAMPILLY P.O.KUZHUPPILLY, ERNAKULAM DISTRICT
RESIDING AT KILIYANTHILPARAMBIL AYYAMPILLY P.O.
KUZHIPILLY, ERNAKULAM DISTRICT.
3. MURALI, S/O.SREDHARAN, TREASURER,
AYYAMPILLY KIZHAKKEPPADAM KARSHAKA SAMAJAM,
AYYAMPILLY P.O. KUZHUPPILLY, ERNAKULAM DISTRICT.
RESIDING AT KOLPURATH VEETIL, AYYAMPILLY P.O.
KUZHUPPILLY, ERNAKULAM DISTRICT.

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4. KUZHUPPILLY GRAMA PANCHAYATH, AYYAMPILLY
P.O. ERNAKULAM DISTRICT REP. BY ITS SECRETARY.

5. THE PRESIDENT, KUZHUPPILLY GRAMA
PANCHAYATH, AYYAMPILLY P.O. KUZHUPPILLY,
ERNAKULAM DISTRICT.

6. VICE PRESIDENT, KUZHUPPILLY GRAMA
PANCHAYATH, AYYAMPILLY P.O. KUZHUPPILLY,
ERNAKULAM DISTRICT.

7. SANTHA, W/O.MOHANAN, MATTACHAL HOUSE,
AYYAMPILLY, ERNAKULAM DISTRICT.

R1 TO R3 BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
R4 BY SRI.H.B.SHENOY,SC,KUZHUPPALLY G.PANCHAYATH
R7 BY ADV. SMT.LAKSHMI B.SHENOY
SRI.P.VISWANATHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF PETITION DTD. 19/11/2002 FILED BY 1ST RESPONDENT BEFORE PRINCIPAL SUBORDINATE JUDGE'S COURT, NORTH PARAVUR AS I.O.P.NO.22 OF 2002.**
- EXT.P2: COPY OF OBJECTIONS DTD. 25/07/2003 FILED BY PETITIONERS AND RESPONDENTS NOS. 4 TO 7 IN O.P.NO.22 OF 2002 BEFORE PRINCIPAL SUBORDINATE JUDGE'S COURT, NORTH PARAVUR.**
- EXT.P3: COPY OF I.A.NO.929 OF 2004 IN O.P.NO.22 OF 2002 FILED BY PETITIONERS AND RESPONDENTS NOS. 4 TO 7 BEFORE PRINCIPAL SUBORDINATE JUDGE'S COURT, NORTH PARAVUR.**
- EXT.P4: COPY OF AFFIDAVIT DTD. 17/08/2004 FILED BY 2ND RESPONDENT IN I.A.NO.929 OF 2004 IN I.O.P.NO.22 OF 2002 BEFORE PRINCIPAL SUBORDINATE JUDGE'S COURT, NORTH PARAVUR.**
- EXT.P5: COPY OF INCOME & EXPENDITURE STATEMENTS OF 1ST RESPONDENT FOR THE YEARS 1999-2000 AND 2000-01.**
- EXT.P6: COPY OF ORDER DTD. 31/05/2005 PASSED BY THE PRINCIPAL SUBORDINATE JUDGE'S COURT, NORTH PARAVUR IN I.O.P.NO. 22 OF 2002.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 32401 of 2005

Dated this the 26th day of June , 2007

JUDGMENT

Respondents 4 and 5 in an original petition before the Sub Court, North Paravur seeking permission to sue as an indigent person filed by the first respondent represented by its Secretary and Treasurer are the petitioners in this writ petition. The petitioners are aggrieved by Ext.P6 order by which the court below granted permission to the first respondent to sue as an indigent person. Ext.P1 is a copy of the I.O.P. No.22/2002 filed by the first respondent and Ext.P2 is a copy of the statement of objection filed jointly before the court below by the petitioners herein and by respondents 4 to 7. It is contended in Ext.P2 that the suit is liable to be rejected since the cause of action is barred in view of the provisions contained in Sections 249 and 250 of the Kerala Panchayat Raj Act 1994 and the Limitation Act 1963 ; that the 1st respondent and its members are possessed sufficient

means which will enable them to pay the requisite court fees. The petitioners and respondents 4 to 7 filed Ext.P3 application under Order X1 Rule 12 of Code of Civil Procedure seeking a direction to the first respondent to make discovery on oath of documents such as Pass Books in relation to their three Savings Bank accounts, Income and Expenditure Account and Balance Sheets for the years 1999 to 2003, Minutes books for the period from 1999 to 2003 deposit books for the year 1999 to 2003,e etc. Ext.P3 application was allowed by the court and the first respondent was directed to produce the documents specified in Ext.P3. It is alleged that the first respondent notwithstanding the directions of the court chose to produce only the pass book relating to S.B.Account. The petitioner also relies on Ext.P5 Income and Expenditure statement which were annexed to a complaint which the first respondent has previously filed before the Ombudsman regarding the subject matter of the suit. The petitioners point out that in the enquiry which was conducted by the court on Ext.P1 application, it was admitted by PW-1 the principal witness of the first respondent that the first respondent received considerable amounts from the Devasom Board

pursuant to orders in O.S. No.118/1958 on the files of the Ernakulam Sub Court and those amounts are all disbursed to its members. It is also alleged that PW-1 confessed that several other relevant documents which will throw light on the contravene as to whether the first respondent or its members came to have assessed which may enable them to pay the court fee had been detailed. It is without considering any of these aspects and without specifically adjudicating the issues as to whether the first respondent or its members on behalf of whom the suit claim is made are having income atleast collectively to pay the court fees that Ext.P6 has been passed by the court below. Impugning Ext.P6 on various grounds in this writ petition, the prayer is that Ext.P6 be set aside and I.O.P. No.22 of 2002 be dismissed.

2. I have heard the submissions of Smt.Lakshmi B.Shenoy, the learned counsel for the petitioners and those of Sri. P.Viswanathan the learned counsel for the contesting respondents 1 to 3 in the writ petition. It would be noticed immediately that respondents 2 and 3 herein are not parties to Ext.P1 I.O.P. No.22/2002. They were arrayed along with the

President and the first respondent as the Secretary and Treasurer representing the first respondent before the court below. Smt.Lakshmi B.Shenoy would submit that the claim in respect of which permission of the court below was sought to sue as an indigent person was ex facie barred by virtue of Section 249 (1) (b) of the Kerala Panchayat Raj Act 1994 read with Sections 3 and 29 of the Indian Limitation Act 1963. Drawing my attention to Rule 5 (f) of order 33 of the Code of Civil Procedure, the learned counsel submitted that the court below has not even adverted to the specific plea which had been raised by the petitioner through Ext.P2 objection. She relied on the judgment of the Orissa High Court in **Miss Reeta, v. Berhampur University and another (AIR 1993 Orissa 27)** to support her argument that when a joint application is filed by several persons indigency of all person collectively is to be taken into account. Strong reliance was placed by her on the judgment of this court in **Krishna Pillai v. Vasudevan (AIR 1965 Ker. 18)** to argue that question of pauperism in a suit filed by an individual representing several other individuals will have to be decided with reference to those individuals who have to be construed as

the real plaintiffs. The learned counsel further submitted that non disclosure of the assets of the petitioner in the application shall entail rejection of the application. She relied on the judgment of this court in **Mathew v. State of Kerala 1996 (2) KLT 363** .

3. Sri.P. Viswanathan, the learned counsel for the contesting respondents however would support Ext.P6 relying on the judgment of this court in **U.M.Usaman v .Simon (1959 KLT 276)** .

4. Having regard to the submissions addressed at the Bar and in the light of the judicial precedents cited by the learned counsel, I am of the view that the petitioner should be permitted to adduce counter evidence before the court below and that the court below shall take a fresh decision on the basis of the counter evidence so adduced.

5. Hence the impugned order is set aside and the court below is directed to take a fresh decision in the matter. The petitioner shall adduce counter evidence before the court below within one month of producing a copy of this judgment before the court. The court below will re-appreciate the entire evidence

coming on record, including the counter evidence to be adduced by the petitioners and take a decision in the light of the judicial precedents to be cited at the bar by the counsel on both sides. In its order the court below will consider the question of maintainability of the suit in view of Section 249 (1) (b) of the Panchayat Raj Act also.

The Writ Petition is allowed as above. No order as to costs.

PIUS C. KURIAKOSE,
JUDGE.

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